By Subscription No. 1000

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AN ELEGY

On the Much Lamented Death of his Grace the Duke of ARGYLE and Greenwich, who departed this Life, on Monday the 3d of this instant October at his Grace's Seat at Sand-brook near Petersham in Surry in the 78th. Year of his Age.

YE Muses Nine, put on your Sable Dress,
And joyn with me in sorrow to rehearse;
The Loss, the greatest loss we ever had,
'Tis such a Loss will make all England sad.
But still alass! a Comfort we obtain,
That his Departure, is his Glorious Gain.

A finer Patriot, surely ne'er was mis't,
Then brave ARGYLE whose gone to heavenly Bliss.
No golden Idol, e'er conld sway his Mind,
But steady to his Trust he was inclin'd;
His only Study was for to preserve
His Country's Right, from which he never swerv'd
His Courage bold, and from Courption free,
He valued not the threats of M---y.
Their Gaudy Titles he did still disdain,
And always spoke his Mind both free and plain.

When he was jogg'd by any Brother P--r,
To Vote against his Mind; He would not hear;
He scorn'd to Falt'er from his Noble Mind,
Which only to do Justice was inclin'd.
By which he gain'd his Country Peoples Heart,
And seem'd displeas'd, when e'er he did depart.
But when their welfare called him away,
They parted with him shouting loud Huzzay's;
With Acclamations of his safe Return,
For which their Hearts most ardently did burn.

No sooner had he Trod the English Shore,
But there were still Rejoyeings more and more:

O! had there been but Issue of his Loins,
A Noble Heart had then been left behind,
That we might had a second brave ARGYLE.
Which would have caus'd the People still to smile,
But now alass! all Joy and Comfort's fled,
Since our Defender brave A---E is Dead;
And now there is none left to take their Part;
They must with Patience bear the Yoke at last.

AN

EPITAPH

WITHIN this Urn, Lyes one whose Soul is (Blest,
Crown'd with Eternal Glory, heavenly Rest,
When Living bore a firm and stiddy Mind,
And to his Country prov'd a Father, kind,
Who while on Earth made it is only Care,
His Country of his Labour should take share
O! may his Name in lasting Memory be,
From Age, to Age, to all Eternity.

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1745

CUP 21 g.31/71

Copy of the Honourable *George Thomas*, and *George Lucas*, Eſquires, Proteſts againſt the Proceedings of the Council of *Antigua*, in reducing the Secretary's Fees.

ANTIGUA: *Council-Chamber*, June *5th*, 1734.

A Queſtion having been put, and carry'd at the laſt Meeting in the Affirmative, "That Mr. "Secretary *Smith*, taking ſuch Fees contrary to, and exceeding, the ſaid Docket; and "contrary to the preſent Act of Courts, is illegal.

The Honourable *George Thomas*, Eſquire, purſuant to his Deſire at the ſaid Meeting, gave in his Reaſons accordingly, which were ordered to be entered in the Journals of this Board, *viz.*

Diſſentient

1*ſt*, Becauſe it appears to me, that although a Docket was ſettled for the Secretary, on the 31*ſt* of *January* 1703. it was little regarded, even by that part of the Legiſlature by which it was ſettled; for by an Act paſſed by them on the 8*th* Day of *February*, in the very ſame Year, Intitled, An Act for Eſtabliſhing of Courts, *&c. all former Acts relating to the Courts were annulled and repealed, new Methods and Forms of Buſineſs introduced*, and the Courts of *Kings-Bench* and *Common-Pleas* were impowered *to tax Coſts at Diſcretion*, which Coſts conſiſt in a great Meaſure of the *Secretary's Fees*, and which have been accordingly taxed and allowed by the *Judges of the ſaid Courts*, in Oppoſition to the Docket for full 30 Years paſt.

2*dly*, Becauſe by another Act, dated in *February* 1711, wherein it is enacted, *that as ſoon as a Table of Officers Fees ſhall be duly ſettled and allowed by the General and Council of this Iſland*, a Copy thereof ſhall be hung up in the proper Offices, *&c.* it appears to me, that the Docket of 1703 was thought unduly ſettled, abſurd or inſufficient. The Acts therefore of 1718 and 1721, obliging the Secretary to fix up his Docket under the Penalty of 100*l. &c.* muſt in my Opinion, to make the Legiſlature conſiſtent, mean the cuſtomary Docket, the ſettled Docket of 1703, not having been regarded by them as ſuch, as appears by the two forementioned Acts of 1703 and 1711.

3*dly*, Becauſe *it is prov'd by Mr. Secretary* Smith, *and allow'd by the* ASSEMBLY, that the ſaid *Smith* hath not *made or increaſed one ſingle Fee ſince he came to his Office, and that the ſame Fees have been taken by his Predeceſſors for* 15, 20, *or near* 30 *Years paſt*; which, I conceive, does give Mr. *Smith* a juſt Title to ſuch Fees; for, by His late Majeſty's Patent, the Offices of Secretary and Clerk of the Crown, are granted to the ſaid *Smith*, to have, hold, exerciſe, and enjoy the ſaid Offices or Places, together with all Fees, Profits, Rights, Perquiſites, and Advantages thereunto belonging, *in as full and ample Manner, as any Perſon or Perſons hath or have formerly held and enjoyed the ſame.* And I am the more confirmed in this Opinion by *His preſent Moſt Gracious Majeſty's* 57th *Inſtruction*, communicated this Day by His Excellency the chief Governour, in the following Words. And *It is our expreſs Will and Pleaſure that you do countenance and give all due Encouragement to all our Patent Officers in the Enjoyment of their legal and accuſtomed Fees, Rights, Privileges, and Emoluments, according to the true Intent and Meaning of their Patents.*

4*thly*, Becauſe I conceive the chief Governours and Council muſt have entertained an Opinion of the Right Mr. Secretary's Predeceſſors had to the Fees they took, from their not having redreſs'd what the Aſſembly alledges was ſo often complain'd of as a Grievance, eſpecially as the Royal Inſtructions have always authoriz'd and directed them ſo to do, and as they muſt have been ſenſible, that their declining it muſt have confirmed Mr. Secretary's Predeceſſors in their Opinion of the Legality of ſuch Fees.

5*thly*, Becauſe this Vote prejudges a Matter, which we are informed will be ſoon brought before us, in a judicial Capacity, as a Court of Errors, and becauſe it has put me under a Neceſſity of giving ſuch Reaſons for my Diſſent, as, I conceive, may be juſtly objected to my ſitting as a Judge in that Court.

GEO. THOMAS.

A true Copy

Pat. Wilſon, D. Secretary.

January the 16th, 1734.

"THE Queſtion being put, whether Mr. *Smith* ought to be paid by the publick of this Iſland for tranſcribing the Minutes of Council, to be ſent home to the Lords of Trade? "Or whether it be his duty to do it *ex officio?*

"It was carried, that he ought to do it *ex officio.*"

Diſſentient

Diſſentient'

1*ſt*, Becauſe it is my Opinion, that his Majeſty's order, this Day produced by Mr. Secretary *Smith*, in Favour of Mr. *Whitworth*, Secretary of *Barbadoes*, recommending Payment for tranſcribing Minutes of Council tranſmitted to the Lords of Trade, and doing other Buſineſs for the Publick there, according to the uſual and accuſtomed Fees given upon the like Occaſions ought to govern in Mr. *Smith*'s Caſe; *Charles Hedges*, and *Gilbert Fleming*, Eſqs; having been heretofore paid for the like Buſineſs, as appears by the Minutes of this Board, of the 6*th* of *July*, 1719: And the 3*d* of *November*, 1720. And becauſe I am not ſenſible that Mr. Secretary's Behaviour in the Execution of his office has been ſuch as to forfeit either the Character given in a Meſſage from this Board to the Aſſembly, on the 28*th* of *February*, 1728, of his having acted in his Poſt with great *Faithfulneſs*, *Diligence*, and *Capacity*, or the Fees then allowed him. For this expreſs Reaſon, becauſe the ſeveral Articles of his Account were allowed to his Predeceſſors.

2*dly*, Becauſe I apprehend the Committee of this Board, appointed to anſwer Mr. Secretary's Repreſentation, are miſtaken in imputing the Payment of Mr. Secretary's Account to the Influence or Vote of the then Chief Governour, having had the Honour to obſerve for near ſeven Years paſt, that the Membefs of this Board were not to be influenced by any Perſon whatſoever, to act contrary to his Majeſty's Service, or the Right of his Subjects, and becauſe that Account was paſſed by a Majority of Votes excluſive of the then Chief Governour's Vote (if he did vote at all) and ſo remarkably free from Influence was his Honour Lieutenant Governour *Bram*, that although he voted for the Account in general, he excepted to Mr. Secretary's being paid for one Quarter's Minutes, becauſe he had not delivered them within the Time limited by his Majeſty's Inſtructions. But to put this Matter, as I conceive, beyond all Exception, another Account of Mr. Secretary's, conſiſting of the ſame Articles of Buſineſs, was Paſt by this Board on the 29*th* of *May*, 1731, when no Chief Governour was preſent, neither could Mr. Secretary, in my Opinion, wait for favourable Opportunities for paſſing his Accounts contrary to the Aſſembly's Order, for bringing in all publick Accounts once a year, as ſeems to be hinted in the ſaid Committee's Report, that Order not having been made till the 17*th* of *April*, 1732.

" The Queſtion being put; whether the preſent General, with Advice and Conſent of Coun-
" cil, has Power, by virtue of his Commiſſion and Inſtructions, to regulate and eſtabliſh
" a Docket of Admiralty Fees?
" It was reſolved in the affirmative."

Diſſentient'

Becauſe this Queſtion does not ſeem to me to ariſe properly out of the Debate on foot concerning the Validity of the Docket of Admiralty Fees, ſettled by General *Codrington* without Conſent of Council: For although it ſhould be admitted that the preſent Chief Governour has Power to regulate and eſtabliſh a Docket with Conſent of Council already eſtabliſhed by a former Chief Governour, it does not follow that a former Chief Governour had not Power ſo to do without Conſent of Council; for to me it is evident that General *Codrington*, by virtue of his commiſſion, produced and read by Mr. Secretary, had ſuch Power.

2*dly*, Becauſe I am in doubt, whether it be intended by his Majeſty's Inſtructions, that a Chief Governour ſhould *diminiſh Fees already ſettled by a former Governour* in Prejudice of *his Majeſty's Letters Patent* granting all legal and accuſtomed Fees, ſince ſuch Power may, in my humble Opinion, be ſometimes exerciſed through diſlike, to the Prejudice of the Patentees and his Majeſty's gracious Intentions be thereby defeated.

" The Queſtion being put; whether the whole Docket propoſed by the Gentlemen appointed,
" as it now ſtands altered, ſhall be agreed to by this Board?
" It was carried in the affirmative."

Diſſentient'

Becauſe agreeing to a Docket conſiſting of near 300 Articles, in two ſhort Meetings, may, I fear, carry the Appearance of too implicite a Condeſcention, to the Opinion of Gentlemen, who, by their Profeſſion, may be intereſted in reducing the Secretary's Fees; the Obſervation that very low Office Fees multiply Clients, being, in my Opinion, as true as it is common.

January 23*d*, 1734.

" Ordered by his Honour the Lieutenant Governour, that Collonel *Morris*, and Mr. *Duer*
" be appointed a Committee to draw up a Reply to Mr. *Smith*'s further Repreſentation given in
" this Day and read at this Board, and that they have a Copy of Mr. *Smith*'s ſaid Repreſentation,
" and the ſaid Paper relating to the Secretary of *Barbadoes*, and have Acceſs to the Records in the
" Secretary's Office. And that as Mr. *Smith* was aſſiſted by Council in drawing up his ſaid Re-
" preſentation, the ſaid Committee are impowered to employ Council at the publick Expence to
" aſſiſt them in drawing the Reply to the ſaid Repreſentation."

Diſſentient'

Becauſe I conceive it wou'd have been more regular, and was more properly within the Province of the Aſſembly in Support of their Remonſtrance againſt Mr. Secretary to have given an Anſwer to his Repreſentation. *And that this Board, as Judges between both, ſhould have reſerved themſelves for Judgment.*

June 18, 1735.

" The ſaid Committee likewiſe delivered in a Docket of the Secretary's Fees, agreed to by this
" Board, on the 16*th* of *January*, 1734, to which the Council made an Addition of two Articles,
" and then again approved the whole, and ordered it to be entred upon the Council-book, which
" was then done; the ſaid Docket, and the ſaid Report, are to be delivered to his Honour the
" Lieutenant Governour, and ordered to be tranſmitted to his Excellency."

Diſſentient,

Diſſentient

Becauſe the Docket now agreed to, and ordered to be tranſmitted to his Excellency, is, I conceive, injurious both to his late Majeſty's Letters Patent to Mr. *Smith*, and contrary to his preſent Majeſty's Inſtructions to the Chief Governour of the *Leeward Iſlands*, ſince it hath reduced the Fees of the Court of Admiralty ſettled agreeable to the Powers given by his Majeſty King *William* the third to *Chriſtopher Codrington*, Eſq; then Chief Governour of the *Leeward Iſlands*. And ſince it hath likewiſe reduced the Fees (which are the better half of the Fees of the Office) given by the Courts in all Bills of Coſts, for above thirty Years paſt, agreeable, as I conceive, to a Clauſe of an Act paſſed in Council the ſame Day the Docket of 1703 was paſt, in the following Words, — And be it further enacted by the Authority aforeſaid, that *all Coſts of Suit*, other than what is given by the Verdict, ſhall be adjuſted and taxed at the *Diſcretion of the Court*, who are hereby likewiſe impowered to increaſe the Coſts ſo given by Verdict, if they ſhall think it convenient ſo to do. And ſince it appears by the Depoſition of Mr. *Thomas Kerby*, and other Proofs, that the ſaid Fees of 1 *l.* 8 *s.* 3 *d.* taxed in Coſts and claimed by Mr. *Smith* were received by the ſaid *Kerby* and all ſucceeding Secretaries from 1703 to this Time; and that the Fees of 13 *s.* 6 *d.* for an Execution and Bill of Coſts, which are now likewiſe reduced, were allowed by the Court upon formal Application made by Mr. Secretary *Hedges*, and received for above twenty Years paſt.

2*dly*, Becauſe, contrary to the Report of the Committee approved of by this Board, which aſſerts that Mr. *Kerby* conſtantly obſerved the Docket of 1703, to the Year 1711, except in one Particular of entring an Action, it appears to me from ſeveral Bills of Coſt within that Time, that the ſaid *Kerby* did charge in 1707, 16 *s.* 6 *d.* for an Attachment, inſtead of 4 *s.* 6 *d.* ſettled by the Docket of 1703, and 6 *s.* for an Order on a Motion inſtead of 1 *s.* 6 *d.* and in 1708, 12 *s.* for a Writ of Error inſtead of 6 *s.* and in 1710, 1 *l.* 4 *s.* 9 *d.* for a Commiſſion of Rebellion inſtead of 18 *s.* 9 *d.* beſides many other Particulars too long to be here enumerated.

3*dly*, Becauſe in the old Docket of 1703, (to which a very religious Adherence has been profeſſed by this Board) the Fee of One Pound *per Cent.* allowed for underwriting for any Sum above 50 *l.* is reduced to One Shilling, from a Surmiſe of its having been a Miſtake, whereas it appeared from the Information of Mr. *Kerby* to this Board, that it was intended to prevent malicious Underwritings for great Sums.

4*thly*, Becauſe I think it unreaſonable, that the Declaration made by Mr. *Hedges*, and ſo much inſiſted upon by the Committee, of his adhering to the Docket of 1703, ſhould affect Mr. *Smith*'s Rights, ſince it fully appears by the Depoſition of Mr. *Kerby*, how ignorant Mr. *Hedges* was at that Time of the Buſineſs of the Office, and how dearly he paid Mr. *Kerby* for his Inſtructions and Aſſiſtance; and ſince it is acknowledged, in the ſame Depoſition, that the Fees of 1 *l.* 8 *s.* 3 *d.* and 13 *s.* 6 *d.* had been and were at that very time demanded and taken by them the ſaid *Hedges* and *Kerby*, and becauſe I cannot conceive how the other Minute referred to by the ſaid Committee can conclude any more, than that the Fees demanded by Mr. *Smith* for a Petition in Council were not agreeable to any Docket or Cuſtom he then knew of, and that he very candidly acknowledged his Error and gave it up.

5*thly*, Becauſe the Fees of this Docket fall much ſhort of even the Docket of 1703, ſince by the Depoſition of Mr. *Kerby* it appears, that *Piſtoles* which paſs'd for 28 *s.* weighed *four Penny weight, and ſix Grains*, whereas they are ſtill current at 28 *s.* although they weigh but barely four Penny weight, and that Exchange was from 40 to 50 *per Cent*, whereas it is now and has been for many Years paſt from 55 to 70 *per Cent*; and ſince by a general Law of the Leeward Iſlands paſs'd in 1691. *French* Crowns were made current at 6 *s.* whereas they now paſs for 7 *s.* and are with half Crowns and *French* Coins of leſs Value, full one half of all the Silver among us: And although it be allowed in the ſaid Committee's Report, that Mr. Secretary may refuſe to receive Silver otherwiſe than agreeable to the Proclamation, and aſſented that the Proclamation does not relate to Gold; it is plain from the Smallneſs of the Articles of the new Docket, that he muſt receive Silver at the preſent Currency or nothing; for although Sugar be, as is alledged, a good Tender in Trade, it is evident how difficult, nay impoſſible it is, to execute any Office upon that Foot, where the Fees are generally under ten Shillings, and many not above one, and in a Country too where freſh Proviſions of all kinds muſt be paid for in ready Money.

6*thly*, Becauſe I think it will not be poſſible for Mr. Secretary to execute his Office upon the Fees of this Docket, which *ſeem to me to have been calculated rather for an Hackney Clerk than an Officer of Truſt*; for allowing the groſs Produce of the Office to have amounted to 1700 *l. per annum*, according to the Information of Mr. *Freeman* given to the Committee (which however according to the beſt of my Remembrance, who was a joint Arbitrator with Mr. *Freeman* on thoſe Accompts, did not amount to near the Sum) as this Docket reduces the Value of the Office to one half of what was then received by the cuſtomary Docket, and as Mr. Secretary does now, and has generally paid upwards of 200 *l. per Annum* for the Hire of three or more Clerks, beſides providing Meat, Drink, Waſhing and Lodging for two or more of them, upwards of 80 *l. per Annum* for an Houſe and Office till he bought both, 50 *l. per Annum* at leaſt for the purchaſe and keeping of two Horſes to attend Meetings of the Council and Aſſembly and Courts at Places diſtant from his Abode, and to collect the Debts of his Office, beſides his Loſs upon thoſe Debts by the Inſolvency of the Contractors, or by taking Sugar or Rum at the Price current, Pens, Ink, and Paper, and many other Charges amounting to no inconſiderable Sum in the Year, I am of Opinion there will not be left ſufficient to provide even a mean Support for a Family in a Country where the moſt frugal Merchants through the Dearneſs of Proviſions cannot live under 7 or 800 *l. per Annum*; ſo that I conceive the Committee's Offer of 600 *l. per Annum* will not be thought to have been founded on a very exact Calculation of the Expence attending the Execution of this Office. And becauſe it is well known that Mr. Secretary *Hedges*, who was remarkable for his Frugality, and *cannot be ſuppoſed to have given more than one half to Mr.* Kerby *for his Information and Aſſiſtance* ſtood in need of the Benevolence of his Friends here, when he